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Nos. 654-655

In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, APPELLANT

v.

DIXIE CARRIERS, INC., ET AL.

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

DIXIE CARRIERS, INC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT

J. LEE RANKIN,
Solicitor General,
VICTOR R. HANSEN,
Assistant Attorney General,
Department of Justice, Washington 25, D. C.
ROBERT W. GINNANE,
General Counsel,
H. NEIL GARSON,
Assistant General Counsel,
Interstate Commerce Commission,
Washington 25, D. C.

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JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the District Court is reported in 143 F. Supp. 844. The court's opinion and its final judgment are set forth as Appendices B and C, respectively, of the appellants' jurisdictional statement in *Atchison, Topeka & Santa Fe Ry.* v. *Dixie Carriers, Inc.*, No. 647, this Term, which appendices are incorporated herein by reference. The Commission's un-

reported orders of October 20, October 21, December 7, December 7 (Corrected Order), December 9, December 16, and December 16, 1955 (I. & S. Docket No. 6491: Fourth Section Application No. 31,120), are set forth, respectively, in Appendices A, D, E, F, G, H, and I, *infra*, pp. 12–22.

JURISDICTION

This suit was brought under 28 U. S. C. 1336 to set aside and enjoin enforcement of orders of the Interstate Commerce Commission. The judgment of the District Court was entered on August 20, 1956, and the notices of appeal of the Commission and of the United States were filed, respectively, on October 18 and October 19, 1956. The jurisdiction of this Court to review the judgment on direct appeal is conferred by 28 U. S. C. 1253 and 2101 (b) and is sustained by the following cases: *Interstate Commerce Commission* v. *Inland Waterways Corp.*, 319 U. S. 671; *American Trucking Assns.* v. *United States*, 344 U. S. 298.

STATUTES INVOLVED

Sections 4 (1), 6 (3), 13 (1), and 15 (7) of the Interstate Commerce Act, 49 U. S. C. 4 (1), 6 (3), 13 (1), and 15 (7), and Sections 8 (b) and 10 (e) of the Administrative Procedure Act, 5 U. S. C. 1007 (b) and 1009 (e), are set forth in Appendix J, *infra*, pp. 23–28.

QUESTIONS PRESENTED

Acting under Section 15 (7) of the Interstate Commerce Act, the Commission ordered the suspension

of certain proposed rate schedules pending a hearing and determination on the lawfulness of such schedules. Concurrently with the above action, the Commission, acting under Section 4 (1) of the Act, withheld relief from the long-and-short-haul provision of that section and assigned the matter for hearing along with the question of the lawfulness of the rates under Section 15 (7). Subsequently, on reconsideration, the Commission vacated the suspension orders but continued the investigation into the lawfulness of the rates and, pending the hearing, granted relief from the long-and-short-haul provision.

The District Court set aside the rate schedules while they were being investigated by the Commission and after they had been in effect almost ten months. The court also enjoined the orders of the Commission granting temporary Section 4 (1) relief.

The following questions are presented by these appeals:

1. Whether the Commission's order vacating the suspension is subject to judicial review.

2. Whether Section 8 of the Administrative Procedure Act required the Commission to make findings in support of its order vacating the suspension.

3. Whether the District Court erred in enjoining the operation of the rate schedules after they had gone into effect and prior to a final decision on their lawfulness by the Commission.

4. Whether the Commission is required to hold a hearing before granting temporary relief from the long-and-short-haul provision of Section 4 (1) of the Interstate Commerce Act.

5. Whether Section 8 of the Administrative Procedure Act requires the Commission to make findings in support of its order granting temporary relief from the long-and-short-haul provision of Section 4 (1) of the Interstate Commerce Act.

6. Whether an order of the Commission under Section 4 (1) is subject to judicial review, particularly at the suit of competing carriers.

STATEMENT

On September 16, 1955, pursuant to the provisions of Section 6 (3) of the Interstate Commerce Act, rail carriers participating in the movement of pipe from the East and South to the Southwest filed with the Commission schedules of reduced rates to become effective on October 26, 1955. Concurrently, the rail carriers filed an application for authority to establish and maintain the rates set forth in the proposed schedules without observing the long-and-short-haul provision of Section 4 (1) of the Act. Several interested parties, including water carrier appellees, filed protests against the proposed rates, and petitioned for their suspension and investigation. Protests were filed also against the grant of Fourth Section relief.

Initial consideration of the petition for investigation and suspension of rates, and the application for Fourth Section relief, devolved, respectively, upon the Board of Suspension[1] and the Fourth Section

[1] The Board of Suspension consists of five employees of the Commission duly constituted as a board pursuant to the provisions of Section 17 (2) of the Act for the purpose of taking

Board.[3] On October 20, 1955, six days before the rates were to become effective, the Board of Suspension issued its order suspending the rates to and including May 25, 1956, and at the same time instituted an investigation into their lawfulness (Appendix A, *infra*, pp. 12–13).[4] The Fourth Section Board on October 21, 1955, voted to withhold relief pending hearing and to assign the application for hearing with the suspension proceeding. (Appendix D, *infra*, p. 14).[5]

On October 26, 1955, the rail carriers filed petitions for reconsideration of the order of the Board of Suspension and for immediate issuance of Fourth Section relief. Replies to such petitions were filed by interested parties. By order entered December 7, 1955, Division 2 of the Commission, acting as an appellate division, vacated the order of suspension of October 20, 1955, but continued the investigation into the lawfulness of the rates (Appendix E, *infra*,

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initial action on the investigation and suspension of rates pursuant to the provisions of Section 15 (7) of the Act.

[3] The Fourth Section Board consists of four employees of the Commission duly constituted as a board pursuant to the provisions of Section 17 (2) of the Act for the purpose of taking initial action on applications for relief from the long and short haul provisions of Section 4 (1) of the Act.

[4] The proceeding before the Suspension Board was styled I. & S. Docket No. 6491, *Pipe, Official and Southern Territories to Southwest.*

[5] The proceeding before the Fourth Section Board was called *Iron and Steel Pipe to the Southwest*, Fourth Section Application No. 31120.

p. 15).[4] On December 9, 1955, Division 2, acting as an appellate division, granted temporary Fourth Section relief pending a hearing of the application (Appendix G, *infra*, pp 18–19). The Commission, by two orders entered December 16, 1955 (Appendices H and I, *infra*, pp. 20–22), denied petitions for reconsideration of the orders of December 7 and 9.

The Commission, by notice dated November 25, 1955, assigned the matter for hearing before an examiner. The hearing was completed on March 9, 1956, but prior thereto, and two months after the rates in question had become effective, the appellees, on or about February 17, 1956, instituted the present action, which asked that the orders of December 7 and 9, 1955, be declared invalid *ab initio*.

The District Court heard argument on May 18, 1955, one week before expiration of the seven-months statutory suspension period authorized by Section 15 (7). It filed its opinion on July 31, 1956, and entered judgment on August 20, 1956. The judgment set aside the Commission's orders of December 7 and 9, 1955, and remanded the cause to the Commission for further proceedings not inconsistent with the court's opinion.

THE QUESTIONS ARE SUBSTANTIAL

These appeals raise questions as to the validity of both the Commission's rate-suspension procedure and its procedure in passing upon applications for tem-

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[4] Subsequently Division 2 issued a corrected order of December 7, 1955, which amplified the reasons for its action in vacating the prior order of suspension (Appendix F, *infra*, pp. 16–17).

porary relief from the long-and-short-haul provision of Section 4 (1) of the Act. The first three questions presented (*supra*, p. 3) relate to the Commission's rate-suspension procedure and are practically identical with the questions presented in the appeal taken by the United States and the Commission in *Amarillo-Borger Express* v. *United States*, 138 F. Supp. 411 (N. D. Texas).[*] This Court, by noting probable jurisdiction of that appeal (*United States* v. *Amarillo-Borger Express*, No. 224, this Term), has recognized the substantiality of these questions. We respectfully refer the Court in this connection to the jurisdictional statement filed in No. 224. As to the remaining questions, we believe them to be substantial for the reasons stated below.

1. Under Section 4 (1), relief from its long-and-short-haul provision may be authorized by the Commission "after investigation." The court below held that the statute thus "clearly implied that the question [whether such relief should be granted] shall be determined upon testimony and after a hearing." We submit, to the contrary, that the "investigation" for which it provides does not include a formal or adversary hearing. In *Inland Empire Council* v. *Millis*, 325 U. S. 697, 706, this Court, in distinguishing between statutory provisions for an "investigation" and a hearing, pointed out that an "investigation" was "essentially informal, not adversary", and "not required to take any particular form" or to constitute a hearing.

[*] The court below said that the instant case "is a parallel of" the *Amarillo* case, expressly approved the case, and adopted its "opinion, conclusions, and reasoning."

That Congress did not intend to make a hearing a requirement for grant of temporary or continuing Fourth Section relief is indicated by the fact that in many other sections of the Act Congress has specifically provided for a hearing. *E. g.*, Sections 1 (14), (15), (19), (21); 3 (1a); 5 (1), (2) (b), (7), (15); 13 (3), (4); 15 (1), (3), (6), (7), (13); 16 (1); 19a (a), 19a (i); 20a (5).

Not only has the Commission long and consistently construed Section 4 (1) as not requiring a hearing, but the Commission in a report to Congress advised it of this construction. A Senate Resolution adopted May 3, 1923, directed the Commission to make a report to the Senate of its administration of Section 4 of the Act, and the report submitted in February, 1924, in response to this Resolution showed that, of 5579 applications under Section 4 which had been entirely disposed of after investigation, there had been a hearing in only 303 and no hearing in 5276. *Administration of Section 4 of the Interstate Commerce Act*, 87 I. C. C. 564, 567.

In 1940, Congress amended Section 4 (1) by providing that tariffs proposing rates subject to that section may be filed when application is made to the Commission thereunder; and that, if the application is approved, the Commission shall permit the tariffs to become effective upon one day's notice. See second proviso of Section 4 (1), *infra*, p. 24. The requirement of a formal hearing prior to the granting of Fourth Section relief would largely nullify the Congressional intent to expedite the establishment,

upon Commission authorization, of rates which are within the purview of the section.[1]

2. The decision below further holds that, in an order granting temporary Fourth Section relief, "there must be some determination and disclosure of the basic reasons why temporary relief is granted." Having held that Section 4 (1) authorizes the grant of such relief only after a hearing, the court below concluded that an order granting such relief must be accompanied by the findings, conclusions, and reasons required by Section 8 (b) of the Administrative Procedure Act. The latter provision, however, applies only to administrative decisions "required by the statute * * * to be made on the record and with opportunity for oral hearing." *American Trucking Associations* v. *United States*, 344 U. S. 298, 320. Since, as we have shown (*supra*, pp. 7–9), a hearing is not required prior to Commission action on a Fourth Section application, the requirements of Section 8 (b) of the Administrative Procedure Act are inapplicable.

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[1] The rules adopted by the Commission likewise recognize the need for expeditious, informal administrative proceedings on Section 4 applications, particularly if the Commission concludes, on the basis of the application and the Commission's investigation thereof, that it should authorize the proposed reduced long haul rates pending the outcome of a hearing on whether to continue such authorization. A rule of practice adopted by the Commission provides (49 C. F. R. 1.200): "The proceedings of the Board of Suspension and the Fourth Section Board shall be informal. No transcription of such proceedings will be made. Subpoenas will not be issued and, except when applications or petitions are required to be attested [in the case of Fourth Section applications], oaths will not be administered."

3. Finally, the decision below holds that orders under Section 4 (1) are subject to judicial review at the suit of competing carriers. But the primary purpose of Section 4 (1) is to protect shippers against higher transportation charges for a shorter than for a longer distance over the same line or route in the same direction. The parties directly affected when the Commission "in special cases, after investigation", authorizes a reduced rate for the long-haul movement, are shippers at the intermediate points. However, the plaintiffs below (appellees here) are neither shippers at intermediate points nor representatives of such shippers.

Even shippers may not maintain a suit to restrain the enforcement of an order under Section 4 (1). *United States* v. *Merchants Etc. Ass'n*, 242 U. S. 178. As the Court there said (p. 188), an order under that section "is permissive merely", and "[t]he carrier is the only necessary party to the proceeding". If affected shippers or communities believe that the rates filed pursuant to a Fourth Section authorization are unreasonable or unjustly discriminatory, their remedy is to file a complaint with the Commission under Section 13 of the Act. 242 U. S. at 188. "To permit communities or shippers to seek redress for such grievances in the courts would invade and often nullify the administrative authority vested in the Commission". *Ibid.*

Although the appellee carriers may have had sufficient interest to participate in the administrative pro-

ceeding, that, of itself, did not give them standing to contest the Commission's action under Section 4 (1). See *Pittsburgh & W. Va. Ry. Co.* v. *United States,* 281 U. S. 479, 486; *Atchison, Topeka & Santa Fe Ry.* v. *United States,* 130 F. Supp. 76, 78 (E. D. Mo.), affirmed, 350 U. S. 892. The conclusion of the court below that the carriers had standing to obtain review of the Commission's action because they were competitors "immediately, adversely and financially affected" loses sight of the fact that any such injury is merely "one of the inescapable consequences of competition." *New York Dock Ry.* v. *Pennsylvania R. Co.,* 62 F. 2d 1010, 1012 (C. A. 3). Cf. *Tennessee Electric Power Co.* v. *Tennessee Valley Authority,* 306 U. S. 118, 140.

CONCLUSION

For the reasons stated, the questions presented by this appeal are substantial and are of public importance. It is respectfully submitted that probable jurisdiction should be noted.

J. LEE RANKIN,
Solicitor General.
VICTOR R. HANSEN,
Assistant Attorney General.
ROBERT W. GINNANE,
General Counsel,
H. NEIL GARSON,
Assistant General Counsel,
Interstate Commerce Commission.

DECEMBER, 1956.

APPENDIX A

SECOND CORRECTED ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Board of Suspension, held at its office in Washington, D. C., on the 20th day of October, A. D., 1955.

INVESTIGATION AND SUSPENSION DOCKET NO. 6491

PIPE, OFFICIAL AND SOUTHERN TERRITORIES TO SOUTHWEST

It appearing, That there have been filed with the Interstate Commerce Commission tariff schedules setting forth new reduced and increased rates and charges, and new rules, regulations and practices affecting such rates and charges, applicable on interstate or foreign commerce, to become effective October 26, 1955, and later, designated as follows:

JOINT TARIFF:
I. C. C. 4116 of F. C. KRATZMEIR, Agent, and
I. C. C. 4615 of H. R. HINSCH, Agent;
Supplement 43 thereto, except as follows: On page 6 thereof, ITEM 360–C, and on pages 2 and 4 thereof all matter referring to ITEM 360–C.

And it further appearing, That upon consideration of the said schedules and protests thereto there is reason to believe that they would if permitted to become effective, result in rates and charges, rules, regulations or practices which would be unjust and unreasonable in violation of the Interstate Commerce Act

and constitute unfair and destructive competitive practices in contravention of the provisions of section 4 of the Interstate Commerce Act, without appropriate authority, and good cause appearing therefor:

It is ordered, That an investigation be, and it is hereby, instituted into and concerning the lawfulness of the rates, charges and regulations contained in said schedules, with a view to making such findings and orders in the premise as the facts and circumstances shall warrant.

It is further ordered, That the operation of the said schedules be and it hereby is suspended, and that the use thereof on interstate and foreign commerce be deferred to and including May 25, 1956, unless otherwise ordered by this Commission.

It is further ordered, That the investigation in this proceeding shall not be confined to the matters and issues hereinbefore stated as the reason for instituting this investigation, but shall include all matters and issues with respect to the lawfulness of the said schedules under the Interstate Commerce Act.

It is further ordered, That neither the schedules hereby suspended nor those sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

And it is further ordered, That a copy of this order be filed with the schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the carriers parties to the said schedules and that the said carriers be, and they are hereby, made respondents to this proceeding.

By the Commission, Board of Suspension.

[SEAL] Harold D. McCoy,

HAROLD D. McCOY, *Secretary.*

APPENDIX D

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At a Session of the INTERSTATE COMMERCE COMMISSION, Fourth Section Board, held at its office in Washington, D. C., on the 21st day of October, A. D. 1955.

ROBERT NEWEL,
R. R. SHERMAN,
R. H. LAWRY, JR.,
Members of the Board.

IRON AND STEEL PIPE TO THE SOUTHWEST

FOURTH SECTION APPLICATION NO. 31120

Voted to withhold relief pending hearing, and to assign the above application for hearing with I. & S. No. 6491.

APPENDIX E

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, acting as an appellate division, held at its office in Washington, D. C., on the 7th day. of December, A. D. 1955.

INVESTIGATION AND SUSPENSION DOCKET NO. 6491

PIPE, OFFICIAL AND SOUTHERN TERRITORIES TO SOUTHWEST

It appearing, That by an order dated October 20, 1955, the Commission, Board of Suspension, entered upon an investigation concerning the lawfulness of new reduced and increased rates, charges and regulations and practices stated in schedules designated therein, and suspended the operation of the said schedules to and including May 25, 1956;

It further appearing, That consideration has been given to a petition of the respondent requesting vacation of the order of suspension, and replies thereto; and good cause appearing therefor:

It is ordered, That the said order of October 20, 1955, be, and the same is hereby, vacated and set aside as of December 17, 1955, insofar as it suspended the operation of the schedules designated therein, but that this proceeding of investigation of said schedules shall continue in full force and effect.

By the Commission, division 2, acting as an appellate division.

[SEAL]

Harold D. McCoy,
HAROLD D. MCCOY, *Secretary.*

APPENDIX F

CORRECTED ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, acting as an Appellate Division, held at its office in Washington, D. C., on the 7th day of December, A. D. 1955.

INVESTIGATION AND SUSPENSION DOCKET NO. 6491

PIPE, OFFICIAL AND SOUTHERN TERRITORIES TO SOUTHWEST

It appearing, That by an order dated October 20, 1955, the Commission, Board of Suspension, entered upon an investigation concerning the lawfulness of new reduced and increased rates, charges and regulations and practices stated in schedules designated therein, and suspended the operation of the said schedules to and including May 25, 1956;

It further appearing, That consideration has been given to a petition by respondents, filed October 26, 1955, requesting vacation of the order of suspension, and of replies by Newtex Steamship Corp., filed November 3, 1955, Brownsville Navigation District, filed November 4, 1955, Barge Service Corp., Youngstown Sheet & Tube Co., American Iron and Machine Co., Waterways Freight Bureau, filed November 7, 1955, thereto, and upon reconsideration of the previous action taken in this proceeding, we are reasonably satisfied that the said schedules if permitted to become effective would not result in rates and charges, rules, regulations, or practices which would be unjust and unreasonable, in violation of the Interstate Commerce Act or constitute unfair and destructive com-

petitive practices in contravention of the National Transportation Policy or be in contravention of the provisions of section 4 of the Interstate Commerce Act; Therefore,

It is ordered, That the said order of October 20, 1955, be, and the same is hereby, vacated and set aside as of December 17, 1955, insofar as it suspended the operation of the schedules designated therein, but that this proceeding of investigation of said schedules shall continue in full force and effect.

By the Commission, division 2, acting as an appellate division.

[SEAL] HAROLD D. MCCOY, *Secretary.*

APPENDIX G

Twenty-sixth Supplemental Fourth Section Order No. 17160 (Corrected)

Order

At a Session of the Interstate Commerce Commission, Division 2, acting as an Appellate Division, held at its office in Washington, D. C., on the 9th day of December, A. D. 1955

IRON AND STEEL PIPE TO THE SOUTHWEST

Upon consideration of the matters and things involved in fourth-section application No. 31120, as amended, filed by F. C. Kratsmoir, Agent, for and on behalf of carriers parties to his tariff I. C. C. 4116, according as they may participate in the traffic, for authority to establish and maintain the rates hereinafter described without observing the long-and-short-haul provision of section 4 of the Interstate Commerce Act, and upon further consideration of fourth-section order No. 17160, entered March 26, 1952, in applications Nos. 18826, 18827, 18828, et al., as modified and amended by supplemental orders entered in other applications from time to time, which applications, and order as amended are hereby referred to and made a part hereof:

It is ordered, That fourth-section order No. 17160, entered, modified, and amended as aforestated, be, and it is hereby, further modified and amended by adding thereto the following paragraph:

It is further ordered, That, upon the effective date of the rates as to which relief is here-

inafter authorized, and until the effective date of the further order to be entered after hearing in fourth-section application No. 31120. applicants therein be, and they are hereby, authorized to establish and maintain over their proposed routes, for the transportation of steel and wrought iron pipe and related articles, as described in exhibit 2 of the application, in straight or mixed carloads, minimum 70,000 pounds, from points in official, Illinois, southern, and western trunk-line territories to points in southwestern territory, as described in the application, as amended, the lowest rates that may be constructed over any line or route on the bases and in the manner proposed in the application, as amended, and to maintain higher rates from and to intermediate points; *Provided,* That rates from or to such higher-rated intermediate points shall not be increased except as may be authorized by this Commission nor exceed the lowest combination of rates subject to the Interstate Commerce Act.

The Commission does not hereby approve any rates filed under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any provision of the Interstate Commerce Act.

By the Commission, Division 2, acting as an Appellate Division.

[SEAL] HAROLD D. MCCOY, *Secretary.*

APPENDIX H

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, acting as an appellate division, held at its office in Washington, D. C., on the 16th day of December, A. D., 1955

INVESTIGATION AND SUSPENSION DOCKET NO. 6491

PIPE, OFFICIAL AND SOUTHERN TERRITORIES TO SOUTHWEST

It appearing, That by an order dated December 7, 1955, the Commission, Division 2, acting as an appellate division, upon consideration of a petition requesting that the order of suspension dated October 20, 1955, be vacated, and replies thereto, and good cause appearing therefor, concluded to vacate the order of suspension as of December 17, 1955, but continued the investigation of the schedules involved;

It further appearing, That several of the protestants have requested reconsideration of the action of Division 2 mentioned above, and that the order of vacation be stayed pending further consideration;

And it further appearing, That sufficient reasons have not been shown for staying the order of December 7, 1955;

It is ordered, That the said petitions be, and they are hereby, denied.

By the Commission, Division 2, acting as an appellate division.

[SEAL] HAROLD D. MCCOY, *Secretary.*

APPENDIX I

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, acting as an appellate division, held at its office in Washington, D. C., on the 16th day of December 1955

INVESTIGATION AND SUSPENSION DOCKET NO. 6491
PIPE, OFFICIAL AND SOUTHERN TERRITORIES TO SOUTHWEST

FOURTH SECTION APPLICATION NO. 31120
STEEL AND WROUGHT PIPE TO THE SOUTHWEST

It appearing, That by an order dated December 9, 1955, the Commission, Division 2, acting as an appellate division, upon consideration of a petition by respondents requesting that the action of the Fourth Section Board in voting to withhold relief in Fourth Section application No. 31120, Steel and Wrought Pipe to the Southwest, be reversed, and the order of suspension be vacated, and replies thereto, and for good cause appearing therefor, concluded to grant the relief prayed for in aforesaid application and to vacate the order of suspension as of December 17, 1955, but to continue the investigation of the schedules involved;

It further appearing, That consideration has been given to petitions filed by several of the protestants requesting (1) reconsideration of the action of Division 2, acting as an appellate division, granting fourth section relief in the Twenty-sixth Supplemental Fourth Section Order No. 17160 (Corrected), Iron

and Steel Pipe to the Southwest, entered December 9, 1955, and that the order be stayed pending reconsideration; and (2) for oral argument in Fourth Section Application No. 31120 and Investigation and Suspension Docket No. 6491;

And it further appearing, That sufficient reasons have not been shown for staying the order of December 9, 1955; and that oral argument is deemed to be unnecessary;

It is ordered, That the said petitions be, and they are hereby, denied.

By the Commission, Division 2, acting as an appellate division.

[SEAL] HAROLD D. MCCOY, *Secretary.*

APPENDIX J

The pertinent provisions of the Interstate Commerce Act, 24 Stat. 379, as amended, 49 U. S. C. 1, *et seq.*, are as follows:

SEC. 4. (1)

It shall be unlawful for any common carrier subject to this part or part III to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this part or part III, but this shall not be construed as authorizing any common carrier within the terms of this part or part III to charge or receive as great compensation for a shorter as for a longer distance: *Provided,* That upon application to the Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section, but in exercising the authority conferred upon it in this proviso the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and no

such authorization shall be granted on account of merely potential water competition not actually in existence: *And provided further,* That tariffs proposing rates subject to the provisions of this paragraph may be filed when application is made to the Commission under the provisions hereof, and in the event such application is approved, the Commission shall permit such tariffs to become effective upon one day's notice.

SEC. 6 (3)

No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schdules in force at the time and kept open to public inspection: *Provided,* That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions: *Provided further,* That the Commission is hereby authorized to make suitable rules and regulations for the simplification of schedules of rates, fares, charges, and classifications and to permit in such rules and regulations the filing of an amendment of or change in any rate, fare, charge, or classification without filing complete schedules covering rates, fares, charges or classi-

fications not changed if, in its judgment, not inconsistent with the public interest.

SEC. 13 (1)

That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this part, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

SEC. 15 (7)

Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders

without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such perod; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after the date

this amendatory provision takes effect, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

The pertinent provisions of the Administrative Procedure Act, 60 Stat. 237, 5 U. S. C. 1 *et seq.*, are as follows:

SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

* * * * *

(b) SUBMITTALS AND DECISIONS.—Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

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SEC. 10. * * *

(e) SCOPE OF REVIEW.—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

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